

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 247 of 1992

with

CRIMINAL APPEAL No 335 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARANBHAI A CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 247 of 1992
MR K.G.Sheth for the appellants
Mr.Y.F.Mehta APP for Respondent No. 1
2. Criminal AppealNo 335 of 1992
MR K.C.Panwala for the appellant
Mr.Y.F.Mehta LAPP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

ORAL JUDGEMENT (Per N.J.Pandya,J.)

Though there are two appeals, in fact, there is only one appeal required to be dealt with by us at present. Criminal Appeal No.335 of 1992 was filed by a lawyer appearing on behalf of the accused. He subsequently, did not pursue the same and in the meantime, Criminal Appeal No.247 of 1992, being Jail Appeal, was already admitted and it was assigned to L.A. Shri K.G.Sheth of this Court to appear on behalf of the accused. L.A. Mr.K.G.Sheth drew our attention to the salient features, which, according to him, should clinch the matter in favour of the accused-appellant.

2. The case of the prosecution is that on 19-1-1991, accused no.1, who was the father-in-law of the deceased Bhadrikaben had strangulated her with an electric wire by giving 3-4 twists and thereby breaking the bronchial track, as also hyoid bone. The reason for the aforesaid dastardly deed was, according to the prosecution, demand of dowry. According to Mr.Sheth, the case of dowry has been given up by the prosecution completely in the course of trial. No doubt, it finds mention in the charge framed at Exh.2.

3. As the marriage was of the duration of 3 years or more, if the case of dowry was established, naturally, the amended provisions of the Indian Evidence Act would come into play. However, that being not the position, as we will later on see, it would not detain us further. In fact, the accused have been acquitted by the learned Additional Sessions Judge of the charge under Sec.498-A of Indian Penal Code. In Sessions Case no.172 of 1991, said learned Judge has, however, believed the case of the prosecution that the deceased was in fact, strangulated in the aforesaid manner by accused no.1 with the connivance and active assistance of accused no.3, the husband. Imprisonment of life has been awarded and for offence under Sec.201 read with Sec.34 of Indian Penal Code, R.I. for 3 years has been awarded and on both, final of Rs.150/- has been imposed and in default thereof, the respective accused to undergo simple imprisonment for 15 days.

4. The dead body of the deceased was not found at the place where the accused are staying. The distance between the house of the accused and the place where the dead body was found is not specifically mentioned

anywhere but in course of evidence, reference is made to the fact that from the house of the accused, if one wants to reach the place where the dead body was found, in a jeep car, it would take approximately 30 minutes. This fact has been mentioned in the panchnama as well.

5. Under the circumstances, it is obvious that, according to the prosecution, on account of demand of dowry, after inflicting physical cruelty which is attended to by this demand, on the fateful day, the deceased was done away with and thereafter, to dispose of the dead body it was taken away at the place where it was found. The finding of the dead body is also in a manner which would render the case of the prosecution, according to Mr. Sheth, very very doubtful. Doubtful, in the sense, that whether the accused were implicated into it or not and whether the dead body was that of Badrikaben or not. The date of the incident is said to be 19-1-1991 and the dead body has been found after 4 days. The post mortem was carried on 24-1-1991. The post mortem report Exh.12 read with the deposition of the Doctor, who performed the examination Exh.11, clearly show that it is the dead body of an unknown female. It was a decomposed body and eyes, nose and face were bitten away by Meggets. Obviously, therefore, there was no question of physical identification of the body.

6. The prosecution has, therefore, fallen back upon the articles that were said to be belonging to the deceased.

7. The dead body was found out of a gunny bag nearby a canal known as "Gangapur Canal". 5 feet away from it, some articles were lying which are the wearing apparels of a woman. Some ornaments which a married woman would ordinarily wear including mangal-sutra were also found. Now, it is on the basis of these wearing apparels and these ornaments that the identity, according to the prosecution is established. For this purpose, they have to rely heavily on the deposition of Chandulal (p.w.11-Exh.28).

8. Said witness Chandulal happens to be the maternal uncle of the deceased. Ever since the age of 7 years, the deceased Bhadrika was staying with Chandulal and virtually therefore, he was her father. Her parents died earlier. In his examination in chief, not a word is stated by said Chandulal about demand of dowry or any harassment being meted out to Bhadrika on that count. In para 1 itself, he has stated that both Bhadrika and her husband-accused no.3 often visited his place and Bhadrika

was quite happy in the beginning and subsequently quarrels started with in-laws complaining that Bhadrika is not doing the household work. Beyond this, no other grievance is referred to or deposed to by this witness.

9. Then comes the important part of identification of the articles and clothes. He had never seen the dead body. It was never shown to him. Curiously enough, in the course of the post mortem examination, Dr.Radheshyam (p.w.2-Exh.11) had taken precaution to remove one toe and fingers of one of the palms and had preserved for the purpose of identification. What use was made of these parts of the body is not coming forth on record and how it could have been made use for the purpose of identification is not clear. Incidentally, we may mention that Chandulal is not shown that parts of the body at all.

10. Under the circumstances, what finally turns out on record is that dead body of an unknown woman is found in a decomposed condition infected with maggots. Her face was eaten away and therefore, there is no possibility of physical identification of the deceased. The wearing apparels which are said to be the basis for the prosecution, under the circumstances, would be the only material left with the prosecution to build up its case against the accused starting with the identity of the deceased.

11. In the background of the aforesaid facts, when demand of dowry is made out and no evidence is led in that regard and there is an acquittal on that count, the question will remain as to why, if at all, it was done, the accused did it. The said witness Chandulal, in his examination in chief itself, says that accused no.2 on 20-1-1991 had come to their place to inquire of Bhadrikaben as she was not at her marital home. It has come on record that on 19-1-1991 Bhadrika had gone to attend sewing classes and her attendance in that class was also found and thereafter, she was found missing. Only through a newspaper item published in daily Gujarati-Mitra the said witness Chandulal came to know about the finding of a dead body of an unknown woman and from their, the chain of events had started. In the meantime, Clerk of Irrigation Department, looking after the canal, had found a dead body contained in a gunny bag. That find of the clerk led to the newspaper item and on reading the newspaper item, Chandulal came into picture.

12. Under the circumstances, we are of the opinion

that the identity of the dead body cannot be said to have been established. Whether it is that of Bhadrikaben or not has therefore become doubtful. The deceased being a married woman admittedly staying with the accused, obviously, when she is not with them, they have many things to explain. So far as accused no.1 is concerned, his daughter-in-law is missing and so far as accused no.3 is concerned, his wife is missing. Obviously, therefore, there will be suspicion about their involvement. However, suspicion cannot lead to conviction. There has to be, especially when the prosecution is relying on circumstantial evidence, unbroken chain of events leading to one conclusion that the accused are the persons responsible for the deed. This chain is missing in the instant case and except for suspicion, there is nothing.

13. We, therefore, accept the appeal and allow the same. Giving benefit of doubt to the accused-appellants, they are ordered to be set at liberty forthwith, if not required in any other case. Fine, if any, paid, is ordered to be refunded. Writ to go forthwith.
